

MEMORANDUM OF UNDERSTANDING
between
THE RAILROAD COMMISSION OF TEXAS,
THE TEXAS WATER COMMISSION, and
THE TEXAS DEPARTMENT OF HEALTH

Section 10 of H.B. 1407, passed by the 67th Legislature, 1981, and appearing as a footnote to the Texas Solid Waste Disposal Act, Texas Civil Statutes, Article 4477-7, provides as follows:

On or before January 1, 1982, the Texas Department of Water Resources, the Texas Department of Health, and the Railroad Commission of Texas shall execute a memorandum of understanding that specifies in detail these agencies' interpretation of the division of jurisdiction among the agencies over waste materials that result from or are related to activities associated with the exploration for and the development, production, and refining of oil or gas. The agencies shall amend the memorandum of understanding at any time that the agencies find it to be necessary.

Pursuant to Section 10 of H.B. 1407, the Railroad Commission of Texas, the Texas Department of Water Resources (predecessor agency to the Texas Water Commission), and the Texas Department of Health (hereinafter "agencies") began discussions to interpret their respective jurisdictions regarding waste materials that result from or are related to activities associated with the exploration, development, and production of oil or gas and the refining of oil. The clarification of the jurisdictions of the agencies benefits the general public as well as the affected industries by promoting efficient administration and avoiding duplication of effort. Therefore, the agencies agreed to interpret in this Memorandum of Understanding (MOU) the division of waste management jurisdiction under the various statutes applicable to oil, gas, or geothermal resource activities.

The original MOU between the agencies became effective on January 1, 1982. Staff members of the three agencies have met several times since that date to discuss revision of the MOU.

Since 1982, the agencies have acquired experience in working with the MOU and with various jurisdictional issues not addressed in the MOU. In addition, the Texas legislature has since enacted statutory language clarifying the Railroad Commission's jurisdiction over oil and gas waste and the Texas Water Commission's jurisdiction over industrial solid and hazardous waste. The agencies are attempting to incorporate their experience and the legislature's guidance into this revision.

Jurisdiction of the Railroad Commission of Texas

Generally, the Railroad Commission of Texas has jurisdiction over the discharge, storage, handling, transportation, reclamation, or disposal of waste materials that result from activities associated with the exploration, development, or production of oil, gas, or geothermal resources. These

waste materials may be disposed of at a solid waste facility permitted by the Texas Water Commission or the Texas Department of Health with the concurrences of the facility owner or operator and the agency having jurisdiction over the facility, provided the Railroad Commission has either permitted the disposal or authorized the disposal by rule.

A list of the oil and gas activities that are subject to the Railroad Commission's jurisdiction appears in the Texas Natural Resources Code, §91.101. The Railroad Commission adopted this list by rule in 16 Texas Administrative Code (TAC) §3.8. The same list of activities appears in the Texas Water Commission regulations at 31 TAC §335.1.

Solid and Hazardous Waste Jurisdiction of the Texas Water Commission

The Texas Water Commission has jurisdiction over the management of industrial solid waste and hazardous waste under the Texas Solid Waste Disposal Act, Texas Civil Statutes, Article 4477-7. The Act defines "solid waste" in a manner that excludes "waste materials which result from activities associated with the exploration, development, or production of oil or gas or geothermal resources, and any other substance or material regulated by the Railroad Commission of Texas pursuant to Section 91.101, Natural Resources Code, unless such waste, substance, or material results from activities associated with gasoline plants, natural gas or natural gas liquids processing plants, pressure maintenance plants, or repressurizing plants and is a hazardous waste as defined by the administrator of the United States Environmental Protection Agency pursuant to the federal Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, 42 U.S.C. 6901 et seq., as amended." Under the Texas Solid Waste Disposal Act, a "hazardous waste" is defined as "any solid waste identified or listed as a hazardous waste by the administrator of the United States Environmental Protection Agency (EPA) pursuant to the federal Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, 42 U.S.C. 6901 et seq., as amended."

The EPA regulations which identify and list hazardous wastes appear at 40 Code of Federal Regulations (CFR) Part 261. These regulations contain an exclusion similar to the exclusion provided in the Texas Solid Waste Disposal Act for wastes that result from oil, gas, or geothermal resource activities. Under 40 CFR §261.4(b)(5), "drilling fluids, produced waters, and other wastes associated with the exploration, development, or production of crude oil, natural gas or geothermal energy" are described as solid wastes which are not hazardous wastes. All wastes that are currently considered to be subject to regulation as hazardous wastes under 40 CFR Part 261, including hazardous oil refinery wastes, are subject to regulation by the Texas Water Commission under the Texas Solid Waste Disposal Act.

Jurisdiction over Discharges under the Texas Water Code, Chapter 26

Under the Texas Water Code, Chapter 26, the Texas Water Commission has jurisdiction over discharges of waste into or adjacent to water in the state other than discharges regulated by the Railroad Commission of Texas. The Railroad Commission regulates discharges of waste from activities associated with the exploration, development, and production of oil, gas, or geothermal resources under the Texas Natural Resources Code, Chapters 91 and 141. However, the discharges of waste resulting from these activities may not cause the violation of the water quality standards established by the Texas

Water Commission.

Jurisdiction over Disposal Wells under the Texas Water Code, Chapter 27

Jurisdiction over wastes disposed of by injection is divided between the Railroad Commission of Texas and the Texas Water Commission as set forth in the Texas Water Code, Chapter 27 (the Injection Well Act). The Railroad Commission has jurisdiction under Chapter 27 over injection wells used to dispose of oil and gas waste. Chapter 27 defines "oil and gas waste" to mean "waste arising out of or incidental to drilling for or producing of oil, gas, or geothermal resources, waste arising out of or incidental to the underground storage of hydrocarbons other than storage in artificial tanks or containers, or waste arising out of or incidental to the operation of gasoline plants, natural gas processing plants, or pressure maintenance or repressurizing plants." The Texas Water Commission has jurisdiction over injection wells used to dispose of other types of waste.

Jurisdiction of the Texas Department of Health

The Texas Department of Health has jurisdiction over the management of non-hazardous municipal solid waste. Where both non-hazardous municipal solid waste and industrial solid waste are involved, except Class I industrial solid waste which is not routinely collected with municipal solid waste and hazardous waste, the Texas Department of Health has jurisdiction. The Texas Department of Health also has jurisdiction over the licensing of receipt, possession, use, processing, storage, transport, and disposal of radioactive materials and low-level radioactive waste (radioactive waste that is not preemptively regulated by the federal government). The Texas Water Commission has jurisdiction over the management of the hazardous waste components of any radioactive waste under the jurisdiction of the Texas Department of Health.

Jurisdiction over Waste from Specific Oil and Gas Activities

Pursuant to Section 10 of H.B. 1407, 67th Legislature, 1981, and in an effort to clarify the division of waste management jurisdiction among the agencies over oil, gas, or geothermal resource activities, the Railroad Commission of Texas, the Texas Water Commission, and the Texas Department of Health hereby agree to the following interpretations of the division of jurisdiction among the agencies over the management of waste from the following specific activities:

1. Drilling, Operation, and Plugging of Wells Associated with the Exploration, Development, or Production of Oil, Gas, or Geothermal Resources - Wells associated with the exploration, development, or production of oil, gas, or geothermal resources include exploratory wells, oil wells, gas wells, geothermal resource wells, fluid injection wells used for secondary and enhanced recovery of oil and gas, oil and gas waste disposal wells, and injection water source wells that penetrate the base of useable quality water. Several types of waste materials can be generated during the drilling, operation, and plugging of these wells. These waste materials include drilling fluids (including water-based and oil-based fluids), cuttings, produced water, produced sand, waste hydrocarbons (including used oil), fracturing fluids, spent acid, workover fluids, treating chemicals (including scale inhibitors, emulsion breakers, paraffin inhibitors, and surfactants), waste cement, filters, and trash (including barrels, dope cans, oily rags, mud sacks, and garbage). Generally, these wastes, whether disposed of by

discharge, landfill, landfarm, evaporation, or injection, are subject to the jurisdiction of the Railroad Commission of Texas.

The Texas Water Commission has jurisdiction over wastes generated at station facilities operated by persons providing well treatment services--acidizing, fracturing, and cementing--to the oil and gas industry. These wastes include chemical residue rinsate from vehicles, vehicle washbay wastewater, waste motor oil, and empty chemical containers and sacks.

2. Field Treatment of Produced Fluids - Oil, gas, and water produced from oil, gas, or geothermal resource wells may be treated in the field in facilities such as separators, skimmers, heater treaters, dehydrators, and sweetening units. Waste materials that result from the field treatment of oil and gas include waste hydrocarbons (including used oil), produced water, hydrogen sulfide scavengers, treating and cleaning chemicals, filters, asbestos insulation, and trash. These wastes are subject to the jurisdiction of the Railroad Commission of Texas.

3. Storage of Oil - Tank bottoms, stormwater runoff, and other wastes from the storage of crude oil before it enters the refinery are under the jurisdiction of the Railroad Commission of Texas. Wastes generated from storage tanks which are part of the refinery, however, are subject to the jurisdiction of the Texas Water Commission, while non-hazardous solid wastes resulting from the wholesale and retail marketing of refined products are subject to the jurisdiction of the Texas Department of Health. Hazardous solid wastes resulting from the marketing of refined products are subject to the jurisdiction of the Texas Water Commission.

4. Underground Hydrocarbon Storage - The disposal of wastes, including saltwater, resulting from the construction, creation, operation, maintenance, closure, or abandonment of an "underground hydrocarbon storage facility" is subject to the jurisdiction of the Railroad Commission of Texas, provided the terms "hydrocarbons" and "underground hydrocarbon storage facility" have the meanings set out in the Texas Natural Resources Code, §91.201.

5. Underground Natural Gas Storage - The disposal of wastes resulting from the construction, operation, or abandonment of an "underground natural gas storage facility" is subject to the jurisdiction of the Railroad Commission of Texas, provided that the terms "natural gas" and "storage facility" have the meanings set out in the Texas Natural Resources Code, §91.173.

6. Transportation of Crude Oil or Natural Gas - Crude oil and natural gas are transported by railcars, tank trucks, barges, tankers, and pipelines. The Railroad Commission of Texas has jurisdiction over waste from the transportation of crude oil prior to the refining of the oil. The Railroad Commission has jurisdiction over waste from the transportation of natural gas, including natural gas liquids, prior to the use of the natural gas in any manufacturing process or as a residential or industrial fuel. The transportation wastes subject to the jurisdiction of the Railroad Commission include wastes from pipeline compressor or pressure stations, and wastes from pipeline hydrostatic pressure tests and other pipeline operations. These wastes include waste hydrocarbons (including used oil), treating and cleaning chemicals, filters, scraper trap sludge, trash, and hydrostatic test waters.

All crude oil spills that occur during transportation will be handled in accordance with the

"State of Texas Oil and Hazardous Substances Spill Contingency Plan" and in accordance with Section 11 of this document, entitled "Spill Response."

7. Reclamation Plants - The Railroad Commission of Texas has jurisdiction over wastes from reclamation plants that process wastes from activities associated with the exploration, development, or production of oil, gas, or geothermal resources, such as lease tank bottoms. Waste management activities of reclamation plants for other materials are subject to the jurisdiction of the Texas Water Commission.

In addition to waste management jurisdiction, the Railroad Commission has jurisdiction over crude oil reclamation plants for the conservation and the prevention of waste of crude oil. The applicable statute and regulations consist primarily of reporting requirements for accounting purposes.

8. Refining of Oil - The management of waste streams resulting from oil refining operations, including spent caustics, spent catalysts, still bottoms or tars, and API separator sludges, is subject to the jurisdiction of the Texas Water Commission. The processing of light ends from the cracking of crude oil or crude oil products is considered to be a refining operation. The term "refining" does not include the processing of natural gas or natural gas liquids.

The Railroad Commission of Texas has jurisdiction over refining activities for the conservation and the prevention of waste of crude oil. The Railroad Commission requires that all crude oil streams into or out of a refinery be reported for accounting purposes. In addition, the Railroad Commission requires that materials recycled and used as a fuel, such as still bottoms or waste crude oil, be reported.

9. Gasoline Plants, Natural Gas or Natural Gas Liquids Processing Plants, and Pressure Maintenance or Repressurizing Plants - Wastes resulting from activities associated with these facilities include produced water, cooling tower water, sulfur bead, sulfides, spent caustics, sweetening agents, spent catalyst, waste hydrocarbons (including used oil), asbestos insulation, treating and cleaning chemicals, filters, trash, and dehydration materials. These wastes are subject to the jurisdiction of the Railroad Commission of Texas under the Texas Natural Resources Code, §91.101, unless the wastes are hazardous wastes as defined by the United States Environmental Protection Agency. If EPA makes a determination that wastes from these activities do not fall within the scope of the exclusion for oil and gas wastes in 40 C.F.R. §261.4(b)(5), then the Texas Water Commission will have jurisdiction to regulate any hazardous wastes from these activities under the Texas Solid Waste Disposal Act. Disposal of waste from these activities by injection is subject to the jurisdiction of the Railroad Commission under the Texas Water Code, Chapter 27.

10. Manufacturing Processes - Wastes that result from the use of natural gas, natural gas liquids, or products refined from crude oil in any manufacturing process, such as the production of petrochemicals or plastics, are industrial wastes subject to the jurisdiction of the Texas Water Commission. The term "manufacturing process" does not include the processing of natural gas or natural gas liquids at gasoline plants or at natural gas or natural gas liquids processing plants.

11. Spill Response - Generally, the Railroad Commission of Texas has spill response authority over spills from activities associated with the exploration, development, and production of oil,

gas, or geothermal resources and the Texas Water Commission has spill response authority over other spills, including those that occur at oil refineries. Incidents involving radioactive materials are handled by the Texas Department of Health.

Both the Railroad Commission of Texas and the Texas Water Commission have spill response authority over spills of harmful quantities of crude oil that occur during transportation or in coastal waters. These spills will be handled in accordance with the "State of Texas Oil and Hazardous Substances Spill Contingency Plan." The plan defines a harmful quantity of crude oil spilled on the ground to be five or more barrels. Any quantity of crude oil spilled into water is defined to be harmful. Under the plan, a spill of a harmful quantity of crude oil from a rig or platform operating in coastal waters, from a crude oil pipeline, or from a truck on an oil and gas lease should be reported to the appropriate Railroad Commission district office. The Railroad Commission will in turn notify the Texas Water Commission about the spill and will take the lead in directing and approving the cleanup of the spill, unless Texas Water Commission authorization and administration of expenditures from the Texas Spill Response Fund is deemed necessary. The Texas Water Commission will take the lead in directing and approving the cleanup of a spill of a harmful quantity of crude oil from a truck on a highway, from a railcar, or from a vessel. Spills from those sources should be reported to the Texas Emergency Response Center at the Texas Water Commission (512/463-7727).

Contaminated soil and other wastes that result from a spill must be stored and disposed of in accordance with the statutes and rules of the agency responsible for directing and approving the cleanup of the spill and, when applicable, in accordance with the "State of Texas Oil and Hazardous Substances Spill Contingency Plan." The agencies consider any spilled material that is not recoverable to be a waste.

This Memorandum of Understanding shall take effect on _____ and supersedes the prior Memorandum of Understanding between the agencies, which took effect on January 1, 1982.

FOR THE RAILROAD COMMISSION OF TEXAS:

Mack Wallace
Chairman

James E. (Jim) Nugent
Commissioner

John Sharp
Commissioner

ATTEST: _____

FOR THE TEXAS WATER COMMISSION:

Larry R. Soward
Executive Director

FOR THE TEXAS DEPARTMENT OF HEALTH:

Robert Bernstein, M.D., F.A.C.P.
Commissioner of Health